

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7606

BILL NUMBER: SB 560

NOTE PREPARED: Jan 15, 2009

BILL AMENDED:

SUBJECT: Joint Physical and Legal Custody.

FIRST AUTHOR: Sen. Kruse

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill establishes a rebuttable presumption that joint legal custody and joint physical custody are in the best interests of a child in a dissolution of marriage. The bill requires the court to provide written findings if the court finds the presumption has been rebutted and joint custody is not in the best interests of the child.

This bill also provides that a court may reduce or cease parental contact between a parent and the parent's children only if the court makes written findings of fact based on clear and convincing evidence of substance abuse, spousal abuse, or child abuse or neglect. The bill permits a court to cease or reduce contact between a parent and child during a pending dissolution case if the court makes written findings that substance abuse, spousal abuse, or child abuse or neglect occurred.

The bill provides that if a parent knowingly falsely accuses the other parent of child abuse or neglect or spousal abuse, the parent who was falsely accused may challenge the parental fitness of the accusing parent. It also provides that during the pendency of a custody case, if both parents were residing in the home before filing for dissolution of marriage, each parent shall maintain an equal time share allocation between the parents and the children.

This bill provides procedures if a parent is relocating. It changes the time a parent must file an objection to a relocation of a child notice.

The bill provides that if a parent knowingly and intentionally prevents the other parent from the other parent's parenting time with a child, a court shall hold the parent in contempt of court.

The bill also provides that each parent is financially liable for their own attorney's fees concerning child custody matters. The bill provides that divorced parents with a child shall alternate years when the parent may claim the federal dependent tax deduction. It provides that certain recorded evidence is admissible in court in family law proceedings. It also requires meetings, hearings, and conferences in a family law action to be recorded.

This bill requires the Division of State Court Administration to compile statistics concerning the failure to pay child support.

Effective Date: July 1, 2009.

Explanation of State Expenditures: This bill will increase the workload of the Division of State Court Administration to compile statistics concerning individuals who are held in contempt of court for failure to pay child support. Increases in workload are expected to be minimal.

Explanation of State Revenues: *Penalty Provision:* The bill provides for contempt of court in certain situations. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. Any additional revenue would likely be small.

Court Fee Revenue: If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures: *Court Workload:* This bill provides that if a court finds that a presumption of joint legal custody and joint physical custody is not in the best interests of the child, the court is required to issue a report concerning factors relevant in rebutting the presumption as well as reasons why joint custody is not in the best interests of the child. This will increase court workload to the extent the court finds joint custody is not in the best interests of the child in a dissolution of marriage case. Actual increases in workload are indeterminable but expected to be small.

The bill also allows a parent who is falsely accused of child abuse or neglect or spousal abuse to challenge the parental fitness of the accusing parent. This provision may increase court caseload, but only to the extent that one parent makes substantiated false accusations of child abuse or neglect or spousal abuse and subsequently the falsely accused parent challenges their parental fitness. Increases are indeterminable, but expected to be small.

Relocation Request Determination Process: The bill also establishes procedures if a parent is relocating in order to modify custody, support, and visitation orders. Under the bill, parents are required to share all decision-making authority regarding important decisions affecting the child's welfare. All disagreements regarding these decisions are to be submitted to a court-appointed mediator. Parents are required to comply with any decisions made by the court mediator.

Parents wishing to relocate are required to proceed through a mediator that will help make determinations

on parent relocation. If a mediator is unable to resolve the differences regarding the relocation, a court is required to hold a hearing to grant or deny the relocation motion. Providing for mediation in relocation requests would help to reduce court caseload. However, by providing for mediation, court expenditures may increase as well to provide mediators to parents who (1) cannot agree or (2) cannot agree and are indigent.

The Division of State Court Administration reports that currently parties are free to hire a mediator privately, and some counties have local rules requiring mediation before parties can schedule a contested hearing. Current statute allows counties to collect an extra \$20 filing fee on divorces, legal separations, and paternity cases that is deposited into a fund to subsidize mediation or other forms of alternative dispute resolution for parties in domestic cases who would be considered indigent. Currently, 25 counties participate in subsidizing the mediation costs of the indigent.

Contempt of Court for Unlawful Relocation: The bill also states that a parent that relocates before a relocation agreement can be made is considered in contempt of court and is subject to a penalty for criminal contempt. One penalty for contempt requires the offender to be confined in jail. If more individuals are detained in county jails for contempt of court, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

Parenting Time Contempt: This bill requires law enforcement officers who respond to calls involving parenting time contempt to file a report detailing the incident. This bill will increase the workload of law enforcement to the extent that individuals report parenting time contempt.

Explanation of Local Revenues: *Fees from Contempt of Court:* The legislation also includes that individuals who commit contempt of court may be subject to a \$500 fine. If additional fines are collected, revenue to local governments or courts might increase. However, any change in revenue would likely be small.

Fees for Mediation Service: Parents involved in mediation services are responsible for fees associated with the services. Fees may be assessed to parents on a sliding scale, depending upon the parents' ability to pay. Fees for mediation services can be expected to partially or fully offset local expenses associated with providing mediation services. Actual increases in revenue are indeterminable.

Civil Liability for Dependant Tax Credit: The legislation provides that the dependant tax credit is to alternate between parents each year for tax filing purposes. If a parent does not comply with this provision, the legislation establishes that the parent in violation has a civil liability to the other parent for any increase in the amount of taxable liability. This will increase civil actions in the state in order to recoup loss of income resulting from improper use of the dependant tax credit. [In 2005, 2,739 single parents filed for the child care dependant tax credit.]

Court Fee Revenue: If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected:

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Loretta Oleksy, Division of State Court Administration; OFMA Income Tax Database.

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